IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1569 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJUBHAI MANUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1569 of 2001

MR DM THAKKAR for M/S THAKKAR ASSOC. for Petitioner

MS BINODA GAJJAR AGP for Respondent No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/09/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), the Commissioner of Police, Surat City, Surat, vide order dated February 6, 2001, Annexure A to the petition, detained the petitioner

- detenu.

2. The averments made in the petition and the grounds of detention manifest that the detaining authority considered the petitioner as a bootlegger within the meaning of Section 2 (b) of the Act and one case under the Prohibition Act is registered on September 7, 2000 against the petitioner which is still pending and the statements of two witnesses were recorded and, therefore, according to the detaining authority, the activities of the detenu are prejudicial to the maintenance of public order and, therefore, powers under Section 9 (2) of the Act were exercised by the detaining authority.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and to set him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. However, Mr. Thakkar, learned advocate for the petitioner has restricted his arguments to the fact that there is considerable delay in passing the order of detention from the date of registration of the case under the Prohibition Act and after his release with a view to fill up the time gap, statements of two witnesses were recorded and on this sole ground the order of detention is vitiated and therefore he urged to quash and set aide the order of detention. Besides this, he submitted that the privilege claimed under section 9 (2) of the Act is not genuine and the detaining authority has not disclosed the names, addresses and occupation of the persons whose statements are recorded.

5. Ms. Gajjar, learned AGP has opposed this petition. However, she does not dispute the factual aspect of the case registered against the petitioner under the Prohibition Act on September 7, 2000. No reply affidavit is filed by the detaining authority controverting the averments made in the petition. She however contended that the statements of two witnesses were recorded on January 19, 2001 and January 21, 2001 respectively and that those statements were also considered while passing the order of detention and the detaining authority came to the conclusion that the fear expressed by the witnesses are correct and genuine and therefore rightly exercised the powers under Section 9

(2) of the Act.

6. There is no manner of doubt that one case against the detenu under the Prohibition Act was registered way back on September 7, 2000 whereas the order of detention came to be passed on February 6, 2001, that is, after a period of five months. It is also not in dispute that the statements of witnesses referred to in the grounds of detention were recorded after the detenu was released on bail in the prohibition case registered against him.

7. Similar question arose before the Supreme Court in the case of Pradeep Nilkanth Paturkar v. S. Ramamurthi, AIR 1994 SC 656. In the said case the Supreme Court set aside the order of detention passed under Section 3 (1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, on the ground of delay in passing the order of detention. In the said judgment, it has been observed by the Supreme Court that on the basis of some criminal cases registered against the detenu and also on the basis of the statements of the witnesses the order of detention passed against the detenu after five months and eight days from the registration of the first case and more than four months from the submission of the proposal and the statements of witnesses referred to in the grounds of detention obtained after the detenu was released on bail, the order is not sustainable and, therefore, set aside the order of detention.

8. Be it stated that the principles enunciated by the Supreme Court in the above case squarely applies to the facts of the present case. At the cost of petition, be it stated that the case against the petitioner is registered on September 7, 2000 and the statements of two witnesses were recorded after the petitioner was released on bail. Thereafter, after five months the order of detention was passed and, therefore, on the basis of the stale material the order of detention was passed. Therefore, it vitiates the order of detention and it is liable to be quashed and set aside and the petition deserves to be allowed on this ground alone.

9. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order of detention dated February 6, 2001 passed against the petitioner detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)